

SUPPORTING STATEMENT

Arrival and Departure Record (Forms I-94, I-94W) and Electronic System for Travel Authorization-ESTA OMB No. 1651-0111

A. Justification

- 1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.**

Forms I-94 and I-94W are included in the manifest requirements imposed by Sections 231 and 235 of the Immigration and Nationality Act (Act) and are required to be prepared by aliens while en route to the United States and presented upon arrival at a sea or air port of entry within the United States. Under the Act, it is the duty of the master or commanding officer, or authorized agent, owner, or consignee of the vessel or aircraft, having any alien on board to deliver to the CBP officers at the port of arrival lists or manifests of the persons on board such vessel or aircraft. The list or manifest must be in the form of a separate Arrival/Departure Record, CBP Form I-94, prepared on board for most passengers, excluding U.S. citizens, lawful permanent resident aliens of the United States, and aliens seeking to immigrate to the United States.

Aliens traveling under the Visa Waiver Program (VWP) program are currently required to present a completed, signed Nonimmigrant Visa Waiver Arrival Departure, Form I-94W, as a condition of admission pursuant to 8 C.F.R. § 217.2(b)(1). However, so long as these travelers are traveling in the air or sea environment and have a travel authorization obtained through the Electronic System for Travel Authorization (ESTA, see below), they may forgo completing the paper I-94W form. ESTA is not available for VWP travelers at land border crossings, though it should be noted that the overwhelming majority of VWP travelers (approximately 99 percent) arrive into the United States in the air environment.

The data elements collected on these forms and through ESTA enable the Department of Homeland Security (DHS) to perform its mission requirements as they relate to the screening of the alien traveler for potential risks to national security, the determination of admissibility to the United States, the timely and accurate capture of alien visitor biographic data, and the matching of the alien's arrival and departure records to

enable the monitoring of an alien's compliance with applicable United States law.

The data provided by an alien through ESTA answer questions that may assist in determining the alien's admissibility to the United States. These questions do not appear on Form I-94, as the alien has undergone the process administered by the Department of State to secure a visa to visit the United States.

As of June 29, 2010, CBP is able to use ESTA to admit travelers to the United States at all airports and large seaports, rather than collecting the paper I-94W from travelers as they undergo the admission process. Very few passengers will continue filling out the I-94W, but it cannot be eliminated completely at this time. As noted previously, ESTA is not available in the land environment. Additionally, travelers will occasionally have to complete an I-94W if there is an outage either at the port or with ESTA, though CBP believes that by the end of 2010 enough redundancy will be built into ESTA that outages will rarely, if ever, be an issue. Thus, this collection of information is being substantially modified to eliminate the burden for the vast majority of I-94W forms.

The Electronic System for Travel Authorization

On August 3, 2007, the President signed into law the *Recommendations of the 9/11 Commission Act of 2007 (9/11 Act)*, Public Law 110-53. Section 711 of the 9/11 Act requires that the Secretary of Homeland Security, in consultation with the Secretary of State, develop and implement an internet-based system which shall collect such biographical and other information as the Secretary determines necessary to determine, in advance of travel, the eligibility of the alien to travel to the United States and whether such travel poses a law enforcement or security risk. To satisfy the requirements of section 711 of the 9/11 Act, DHS has implemented the Electronic System for Travel Authorization (ESTA). Unlike the I-94W which is presented to the CBP officer upon arrival at the U.S. port of entry, ESTA screens travelers seeking to enter the United States under the VWP prior to their travel to the United States and is completed electronically prior to boarding the plane to travel to the United States. ESTA is intended to prevent ineligible travelers from departing for the United States. DHS notes that an authorization to travel to the United States; however, ESTA is not a determination that the alien is admissible. A determination of admissibility is made only after an applicant applies for admission is inspected by a CBP officer at a U.S. port of entry.

On March 4, 2010, the *United States Capitol Police Administrative Technical Corrections Act of 2009*, Public Law 111-145 was enacted. The Travel Promotion Act of 2009 (TPA), which was contained in section 9,

mandates the Secretary to establish a fee for the use of the ESTA system and to begin assessing and collecting that fee no later than 6 months after enactment of the TPA. See section 217(h)(3)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1187 (h)(3)(B). Accordingly, to comply with the TPA, the Secretary is required to assess and collect the fee by September 4, 2010.

The TPA expressly provides that the required initial ESTA fee shall consist of the sum of “\$10 per travel authorization” (travel promotion fee) plus “an amount that will at least ensure recovery of the full costs of providing and administering the System, as determined by the Secretary” (operational fee). The TPA provides that the \$10 per travel authorization is to be credited to the Travel Promotion Fund established by the TPA and is to be used by the Corporation for Travel Promotion, also established by the TPA, to promote international travel to the United States. The operational fee is to be transferred to the general fund of the Treasury and made available to pay the costs incurred to administer ESTA. Under the TPA, the travel promotion fee has a sunset provision and the Secretary is authorized to collect this fee only through September 30, 2015. The operational fee, in contrast, does not include a sunset provision.

CBP will use the fee to sustain the costs associated with developing and maintaining the ESTA as well as contributing to the Travel Promotion Fund. In accordance with the TPA, CBP is planning to institute a \$4.00 fee for use of ESTA plus the \$10 fee for the Travel Promotion Fund and will announce this fee in an interim final rule to be published in the Federal Register in late 2010. The \$4.00 fee amount is based on actual and projected costs relating to designing, implementing, and administering the system and it will be collected as part of the online ESTA application process beginning in 2010, 60 days after the regulations are published.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

The data collected on Forms I-94/94W and on ESTA provide information required to support DHS mission requirements as they relate to the screening of alien visitors to the United States. Specifically, the information collected is used for potential law enforcement and national security risk, the timely and accurate capture of data that enables matching of alien arrival and departure records that are necessary to monitor alien compliance with United States law, and the support of the development of automated solutions intended to further streamline document handling and information processing. ESTA is mandated by Congress to enhance national security by increasing the amount of

information available to DHS regarding VWP travelers before such travelers embark on a carrier destined for the United States. As the rationale for mandating the implementation of ESTA, Congress noted that VWP travelers are not subject to the same degree of screening as those travelers who must first obtain a visa before departing for the United States. Therefore, these data are being collected via ESTA in order to mitigate the security vulnerabilities of the VWP, whereby travelers seeking to avoid the scrutiny of the visa issuance process or circumvent immigration laws may attempt to enter the United States under the VWP.

Although ESTA was initially provided with funding, no money was allocated for the system in the FY2010 budget and no money will be allocated in future fiscal years. CBP will use the \$4.00 fee for ESTA to support the costs associated with designing, implementing, and administering the system. Specifically, the \$4.00 fee will provide CBP with the ability to recoup the funds spent on developing and administering the system in 2008 and 2009 as well as provide the necessary funding to continue staffing, operating, and updating ESTA in the future.

- 3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.**

Forms I-94 and I-94W are paper documents prepared by most aliens traveling to the United States (though now most VWP travelers will forgo completing the I-94W). ESTA is a web-based system that enables VWP travelers to electronically enter applications for authorization to travel to the United States via the VWP.

- 4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.**

DHS is currently implementing a multi-phase project intended to eliminate the I-94W, as much of the information on this form is also provided through ESTA prior to travel. The vast majority of I-94W forms will thus be eliminated and will greatly reduce duplication of information collection.

- 5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.**

This information collection does not have an impact on small businesses or other small entities.

- 6. Describe consequences to Federal program or policy activities if the collection is not conducted or is conducted less frequently.**

Without this information collection, CBP would be unable to track or document an alien's arrival to and departure from the United States.

- 7. Explain any special circumstances that would cause an information collection to be conducted in a manner:**

This information is collected in a manner consistent with the guidelines of 5 CFR 1320.6.

- 8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.**

CBP published an interim final rule to establish the \$14.00 fee for ESTA on August 9, 2010 (Volume 75, Page 47701).

- 9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.**

There is no offer of a monetary or material value for this information collection.

- 10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.**

DHS advises preparers of Forms I-94 and I-94W and applicants who interact with ESTA for authorization to travel to the United States that the data entered on the forms and through the internet is subject to the protection afforded by the United States Privacy Act. Further, DHS advises that the information entered is used for U.S. government purposes and official use only.

- 11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the**

information, and the explanation to be given to persons from whom the information is requested.

The forms and the electronic application for authorization to travel to the United States prepared by the VWP traveler contain “sensitive” questions and information that may be commonly considered private. The information provided by the traveler is used by DHS to determine risk to national security and, therefore, admissibility. The traveler is advised that the information is secured and subject to the Privacy Act regarding limitations on distribution is used for official U.S. Government purposes only. The traveler is advised by information provided on the Forms and in ESTA that his consent to this official use of the information is indicated by his signature or otherwise indicated by his acknowledgement as provided in the electronic application prepared via ESTA.

12. Provide estimates of the hour burden of the collection of information.

NEW

Form/Collection	Number of Respondents	Total Annual Responses	Time Per Respondent (in hours)	Annual Reporting Burden
I-94	14,000,000	14,000,000	0.133 (8 mins)	1,862,000
I-94W	100,000	100,000	0.133 (8 mins)	13,300
ESTA burden	18,900,000	18,900,000	0.25 (15 mins)	4,725,000
ESTA fee* (subset of total ESTA respondents)	16,000,000 (subset of 18.9m above)	16,000,000 (subset of 18.9m above)	0.00 (already included in ESTA burden above)	0.00 (already included in ESTA burden above)
TOTAL	33,000,000	33,000,000		6,600,300

*Note that the 16 million respondents paying the \$14.00 for the ESTA fees are a subset of the total 18.9 million ESTA respondents. They should not be added to the total respondents (or else they would be double counted).

OLD

Form/Collection	Number of Respondents	Total Annual Responses	Time Per Respondent (in hours)	Annual Reporting Burden
I-94	14,000,000	14,000,000	.133 (8 mins)	1,862,000
I-94W	100,000	100,000	.133 (8 mins)	13,300
ESTA	18,900,000	18,900,000	0.25 (15 mins)	4,725,000

TOTAL	33,000,000	33,000,000		6,600,300
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New

The number of respondents who pay the ESTA fees is different from the total number of applicants. Under the 2008 ESTA interim final rule, we believe that most travelers will need to access ESTA each time they intend to travel to the United States to update their information. Under the 2010 ESTA interim final rule, which implements the \$14.00 fees, these fees are paid only once—during initial application or to update an expired travel authorization—not for every trip to the United States. Thus, the number of respondents estimated under the ESTA fee accounts for *repeat* travelers.

*It should also be noted that for the purposes of the PRA, the correct cost to the public for ESTA should be \$4.00 per respondent, not \$14.00. \$4.00 is the application fee to submit information using ESTA. The extra \$10.00 is a travel/tourism tax that was mandated by the Travel Promotion Act. CBP is collecting this tax at the time ESTA is filed, however it is not a PRA application or filing fee. This \$10 tax was only included in these calculations because it is part of the Interim Final Rule.

Public Cost:

NEW:

The estimated annual public cost is **\$612,728,400** and is calculated as follows:

Form/Collection	Respondents	Value of time (\$28.00 per hour)*	Fee charge (\$6 per respondent)	ESTA fee (\$14.00 per respondent)	Total public cost
I-94	14,000,000	\$52,136,000	\$84,000,000	\$0	\$136,136,000
I-94W	100,000	372,400	\$600,000	0	\$600,000
ESTA burden	18,900,000	132,300,000	0	0	132,300,000
ESTA fee	16,000,000	0	0	224,000,000	224,000,000
Grand total		\$184,808,400	\$84,600,000	\$224,000,000	\$493,036,000

* Recall from the previous table that the burden for the I-94 and I-94W forms is 8 minutes (0.133 hours); the burden for ESTA is 15 minutes (0.25 hours).

OLD

The estimated annual public cost is **\$382,808,400** and is calculated as follows:

Form/Collection	Respondents	Value of time (\$28.00 per hour)	Immigration fee (\$6 per respondent)	Total public cost
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I-94	14,000,000	\$52,136,000	\$84,000,000	\$136,136,000
I-94W	100,000	372,400	114,000,000*	114,372,400
ESTA burden	18,900,000	132,300,000	0	132,300,000
Grand total		\$184,808,400	\$198,000,000	\$382,808,400

13. Provide an estimate of the total annual cost burden to respondents or record keepers resulting from the collection of information.

There are no record keeping, capital, start-up or maintenance costs associated with this information collection. The fee charges related to this ICR are described in item #12 above.

14. Provide estimates of annualized cost to the Federal Government. Also provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information.

There are no Government costs to process these forms because the costs are offset by the fee charges. The purpose of the ESTA fee interim final rule is to make the system self-sustaining and to no longer have the program funded through appropriations.

15. Explain the reasons for any program changes or adjustments reported in Items 12 or 13 of this Statement.

Public costs were added to the ICR for ESTA due to the collection of the \$14.00 fee which is a combination of a \$4.00 filing fee and a \$10.00 tax required by the Travel Promotion Act.

16. For collection of information whose results will be published, outline plans for tabulation, and publication.

This information collection will not be published.

17. If seeking approval to not display the expiration date, explain the reasons that displaying the expiration date would be inappropriate

CBP requests not to display the expiration date on these two forms because large quantities (50 million) are stocked at CBP ports in 17 languages. However, when a new expiration date is provided by OMB, CBP will display it on the ESTA website.

18. "Certification for Paperwork Reduction Act Submissions."

CBP does not request an exception to the certification of this information collection.

B. Collection of Information Employing Statistical Methods

No statistical methods were employed.